

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: Property at 5 Thornbridge Road, Falkirk, FK2 9AZ being the east most ground floor house tinted blue on the Title Plan of the block 1, 3, 5 and 7 Thornbridge Road, with the garden ground tinted, all as more particularly described in Land Certificate Title number STG 51885 (hereinafter referred to as "the house")

PRHP Reference: PRHP/RP/14/0081

The Parties:

WILLIAM STEWART, 5 Thornbridge Road, Falkirk, FK2 9AZ ("the tenant")

MOHAMMED ALI, c/o Roy McIntosh, RTM Lettings and Sales, 178 Grahams Road, Falkirk, FK2 9AZ ("the landlord")

Notice to MOHAMMED ALI ("the landlord")

Whereas in terms of its decision of 27th March 2015, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Housing (Scotland) Act 2006 and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,

the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,

any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the landlord:

- (i) To replace or carry out such works to the guttering to ensure that it is water tight and is that it is in a reasonable state of repair and functioning adequately;
- (ii) To replace or secure the electrical socket in the back bedroom of the property to ensure that it is fixed safely to the wall and in proper working order;
- (iii) To replace the shower unit or to carry out such works to the sealing of the unit to ensure that the shower is water tight;
- (iv) To fix a weather seal to the foot of the back door in the kitchen to address the gap between the door and the kitchen wall to ensure that draughts into the property are eliminated.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within a period of 4 weeks from the date of service of this Notice.

Right of Appeal

A landlord or tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or determined.

IN WITNESS WHEREOF these presents typewritten on this are signed by Simone Sweeney, Chairperson of the Private Rented Housing Committee, at Glasgow, on 27th day of March, Two Thousand and Fifteen in the presence of the undernoted witness:

S. SWEENEY

Chairp

K. LIMOND

Witness

Witness name: Kirstie Limond

Designation: Public Liability officer (acting)

Business address: Wheatley Group, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING
COMMITTEE UNDER SECTION 24(1) OF THE HOUSING
(SCOTLAND) ACT 2006

In connection with

Property at 5 Thornbridge Road, Falkirk, FK2 9AZ ("the property")

WILLIAM STEWART, 5 Thornbridge Road, Falkirk, FK2 9AZ ("the tenant")

MOHAMMED ALI, c/o Roy McIntosh, RTM Lettings and Sales, 178 Grahams Road, Falkirk, FK2 9AZ ("the landlord")

Reference number: PRHP/RP/14/0081

Decision

Having made such enquiries as is fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and taking into account the evidence led from the tenant and the landlord at the hearing and the documentation and photographs submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

Relevant Statutory Provisions

Section 13: The repairing standard

(1) A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Section 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

(a)at the start of the tenancy, and

(b)at all times during the tenancy.

Background

1. By application dated, 21st March 2014, the tenant applied to the PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In the application the tenant stated that the landlord had failed to comply with section 13 (1) (a) (b) (c) and (d) of the Act ("the repairing standard").
3. In his application, attached to section 4, the tenant specified how he considered that the landlord had failed to meet the repairing standard:

"Shower (Leaking) has been repaired on several occasions

Back Bedroom Window (Has been sealed and cannot be opened as this would break the seal)

Front door (Glass pane cracked, draughts coming through door)

Back door (Draughts and mould on surrounding wood)

Back bedroom (Electrical socket hanging off wall)

Kitchen (Few cupboard space and moulding falling off cupboard doors)

Front and back bedroom (Had damp in both bedrooms but this was was plastered but further damp has arisen under the bedroom window and going along the wall)

Guttering (Joint at corners is leaking)

Living room (Damp patch on window wall)

There is damp in every room off the house but keep getting told it is condensation a Dehumidifier was supplied by the Letting Agency but very little water has been absorbed by this. I have asked for the above repairs to be done since I moved into the flat in September 2011 but nothing has been done except the plaster work. Window sealed and an Extractor fan put in the Bathroom window. Roughly about six months ago the kitchen was decorated (paid for by ourselves as the landlord would not do it) now the paper is coming off the wall and black damp patches have appeared again. There is dampness from the Kitchen Window right along the wall towards to Living Room."

4. In support of his application, the tenant had submitted copy letters from the landlord's letting agents (dated, 28th February 2012 and 26th February 2014) copy landlord notification of repair letter dated, 5th March 2014, copy lease between the parties, dated 16th September 2012, copy of survey report from DM Hall dated 7th January 2013 instructed by the letting agents on behalf of the landlord, copy emails from Corporate and Neighbourhood Services, Falkirk Council to the PRHP, dated 2nd and 4th April 2014, copy Notices requiring possession of the property in terms of Section 21 (1) (b) of the Housing Scotland Act 1988 and black and white photographs of the interior and exterior of the property.
5. By letter of 28th March 2014, the PRHP referred the application to the committee in terms of Section 23 (1) of the Act. The PRHP was made aware that the tenant was no longer residing at the property having vacated it at the end of the lease on 28th April 2014. Notwithstanding that the tenancy had been lawfully terminated and that the property now being vacant and accordingly under schedule 7(1) of the Act, the tenant is to be treated as having withdrawn the application, the President of the PRHP issued a minute of continuation to a determination, in terms of Schedule 2, Paragraph 7(2) of the Act on 19th August 2014. The reasons for the minute of continuation were set out, as follows:

"Within the application the Tenant alleges repairs required to be carried out to the house which if substantiated are likely to raise potential health/safety issues as to whether the property is fit for human habitation. Given the nature of these allegations which involve issues relating to faulty electrics; the house not being wind and watertight; dampness in the house; and leaking guttering, the Committee considers that the application should be determined on public interest grounds due to the nature of the alleged repairs and the potential effects for any future tenants if the allegations are substantiated. Accordingly the Committee has decided to continue to determine the application."

6. An inspection and hearing were assigned for 17th October 2014. By letter of 26th September 2014, parties were given notice of the date and time of the inspection and hearing. When the committee attended the property at 10am, there was no attendance by the tenant or the letting agents on behalf of the landlord. Another tenant, now residing at the property advised that she had not been made aware of the inspection and that it was inconvenient for the inspection to proceed. Neither the letting agents on behalf of the landlord nor the tenant who had submitted the application attended the hearing assigned to take place at 12 noon. The committee, being satisfied that an inspection of the property was required in light of the issues raised in the application and having been made aware that a new tenant was residing at the property, continued the matter to a second hearing was necessary in terms of Section 21 (1) (b) of the Act and that the landlord had received notification on the same date. A second inspection and hearing were assigned for 6th March 2015. The committee comprised the following members:

- (i) Miss Simone Sweeney, Legal member;
- (ii) Mr Kingsley Bruce, Surveyor member and;
- (iii) Ms Brenda Higgins, Housing member.

7. An inspection of the property took place at 10am on 6th March 2015. Only the letting agent, Mr Roy McIntosh was present.
8. Following the inspection, a hearing of evidence took place within the Westfield Community Centre, Westfield Street, Falkirk, FK2 9BW. In attendance at the hearing was letting agent, Mr McIntosh. The committee heard submissions from Mr McIntosh and considered the documentation and photographs submitted by the parties. At the conclusion of the submissions of Mr McIntosh, the committee adjourned to consider all the evidence provided and to make its findings.

Submissions at the hearing

9. The committee chair invited Mr McIntosh to submit the landlord's position to each of the issues which the tenant had set out in his application to enable the committee to determine whether the property met the repairing standard in terms of the Act. The issues to be addressed were: (i) the leaking shower; (ii) the back bedroom window failing to open; (iii) draughts coming through the front door; (iv) draughts and mould on the wood surrounding the back door; (v) the electrical socket hanging off the wall; (vi) the number of cupboards in the kitchen and the moulding coming off the kitchen cupboard doors; (vii) dampness on walls in front and back bedrooms; (viii) leaking guttering; (ix) dampness on wall below window of living room. Mr McIntosh addressed the committee on each complaint
10. Mr McIntosh introduced himself to the committee as the landlord's letting agent. He confirmed that Mr Mohammed Ali is the landlord of the property. Mr McIntosh asked the committee to note that his business had moved address recently and requested that the committee and PRHP administration note his new business address as, RTM Lettings (Let Direct) 46 Polwarth Avenue, Brightons, Falkirk, FK2 0HT.
11. Starting with the shower, Mr McIntosh stated that the seal around the shower had not been kept clean by the former tenant who had submitted the application. Mr McIntosh had visited the property approximately once a month when the tenant had been residing there but the tenant had never made an issue about these matters until the landlord had served a Notice to Quit on the tenant. Mr McIntosh advised the committee that he understood that the seal around the base of the shower had come away from the wall allowing water to leak into the area between the shower unit and the wall. Mr McIntosh submitted that on recent inspection he was not aware of any water leaking from the shower at present but he accepted that the seal around the shower was broken and could have caused leaks in the past. Moreover Mr

McIntosh accepted that leaks had caused water damage and mould growth to develop on the wall which divided the bathroom from the hallway of the property.

12. With regards to the window in the back bedroom, Mr McIntosh submitted that the letting agents had never sealed the window. As far as he was concerned, the window was fully functioning although the original seal may have become a bit compressed with use and over time. Mr McIntosh explained to the committee that the tenant had applied secondary foam sealing over the original sealing around the window. It was suggested that this may cause the window to stick when it is pushed open.
13. In respect of there being draughts coming through the front door to the property, Mr McIntosh submitted that the front door was fully functional. He submitted that the door was old and wooden and in an ideal world the landlord might prefer to replace the existing door with a UPVC style but this was not intended at this time. Mr McIntosh disputed that the allegation that draughts were coming through the front door. In any event the front door leads into a vestibule which has a separate door dividing the main hallway from the front entrance door. Mr McIntosh submitted that this offers, "double- sheeting" against any draughts..
14. With regards to the allegations of draughts and mould on the wood surrounding the back door, Mr McIntosh's conceded that there are draughts here caused by a gap at the foot of the back door. He also accepted that there was mould on the wood at the back door. Mr McIntosh explained that the problem had been long standing and had been worse in the past when the tenant had operated a tumble dryer at this area of the kitchen and there had been a carpet covering the flooring. This had created a good deal of condensation. In an effort to address the problem the landlord had replaced the carpet with tiles and provided 2 dehumidifiers at the property. The tumble dryer was no longer there.
15. Mr McIntosh did not dispute the allegation of an electrical socket hanging off the wall in the back bedroom. He confirmed that he had identified it himself at the time of the committee's inspection. Mr McIntosh provided the committee with an undertaking to address the issue immediately.
16. As far as the complaint that the number of cupboards in the kitchen was insufficient and the moulding was coming off the cupboard doors, Mr McIntosh conceded that, ideally, greater storage would have been provided within the kitchen. The committee confirmed to Mr McIntosh that the number of kitchen cupboards at the property did not fall within the repairing standard and therefore the committee had no jurisdiction to make any finding in respect of this complaint. Mr McIntosh denied that any of the moulding was coming off the kitchen cupboard doors.

17. Turning to the allegation of dampness on walls in front and back bedrooms, Mr McIntosh conceded that there was evidence of condensation on the walls of the bedroom at the front of the property during the committee's inspection. He denied that there was any evidence of dampness within the bedroom at the rear of the property, at this time. Mr McIntosh explained that there had been condensation within the back bedroom previously. He submitted that this had been caused by the tenant having a bed positioned against the wall and failing to ventilate adequately. Having been made aware of the tenant's complaint, re-plastering of two of the walls in the rear bedroom had been completed. This work had been completed approximately one year previously. Mr McIntosh denied that there was evidence of dampness on the gable wall, that this was condensation caused by the number of people in the house, the amount of belonging in the room. Notwithstanding this, he submitted that it was the intention of the landlord to have the gable wall re-plastered in any event.
18. Mr McIntosh accepted the allegation that there was a problem with the gutters of the property causing water to leak. It was submitted that the guttering was old and that it was the landlord's intention to replace the guttering in its entirety. Discussions with the owner in the property immediately above that which forms the basis of this application are currently on-going to see if agreement can be reached over the costs of such works.
19. Finally, where the complaint of dampness on the wall below the window in the living room was concerned, Mr McIntosh denied that there was any problem, at present. Mr McIntosh accepted that there had been a patch of dampness at this area when the tenant who had submitted this application had been residing at the property. Mr McIntosh was of the view that the problem had been caused from the tenant drying clothing at this area and failing to ventilate the property, adequately.

Summary of the issues

20. The issues to be determined are;
- (i) whether the landlord has complied with the duty imposed by sections 13 (1) (a) (b) (c) and (d) of the Act and;
 - (ii) whether the landlord has complied with the duty imposed by Section 14 (1) (b).

Findings in fact

21. The committee make the following findings in fact:
22. That the tenancy between the parties for the property is dated 16th September 2012 being the date on which the tenancy commenced. That Mr Mohammed Shoaib Ali is the landlord. The

lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.

23. That the property is owned jointly by Mohammed Shoaib Ali and Shazeea Aslam and bears the title number STG51885, having been purchased by them on 24th June 2006.
24. That, by letter of 5th March 2014 (Landlord notification of repair letter) the landlord was made aware of the tenants' complaints as that narrated at paragraph 3, above.
25. That the tenant submitted an application to the PRHP on 21st March 2014.
26. That the landlord had carried out some works in an attempt to address the complaints set out in the tenant's application. The works included, re-plastering to two of the walls in the back bedroom; providing de-humidifiers; replacing carpets in the kitchen with tiles and re-plastering the gable wall of the bedroom at the front of the property
27. That, on 4th April 2014, a representative of the landlord's letting agents' responded to a Notice of Referral from the PRHP of 28th March 2014, indicating that there would be representation for the landlord at a hearing of the committee.
28. That there was no response from the tenant to a Notice of Referral from the PRHP of 28th March 2014 or to subsequent letter from the PRHP, dated, 13th June 2014.
29. That, a Notice requiring possession of the property in terms of Section 21 (1) (b) by 28th April 2014 was served on the tenant at the property, dated, 26th February 2014.
30. That the tenant had vacated the property by the end of the lease,
31. That the President of the PRHP issued a minute of continuation to a determination, in terms of Schedule 2, Paragraph 7(2) of the Act on 19th August 2014.
32. That an inspection and hearing was arranged to take place on Friday 31st October 2014 and this was intimated to the landlord on 26th September 2014.
33. That neither the landlord nor the letting agents were present at that inspection, that a new tenant was residing at the tenancy who had received no notification of the committee's inspection and that no access was gained to enable the committee to inspect the property.
34. That a second inspection and hearing were assigned for Friday 6th March 2015.
35. That on the date of the inspection, the weather was dry.

36. That the property comprises a ground floor flat in a 4 in a block style property built circa 1930 and located in Falkirk. The property is situated in a residential area close to the town centre. The block has a brick/render and a pitched roof. There is main door entrance, communal gardens and parking to the right side of the property. The accommodation comprises a hall, living room, 2 bedrooms, kitchen and bathroom, with rear door leading to the back communal garden. The property has gas central heating. The windows are double glazed with pvc frames.
37. That, on inspection of the living room, the committee found there to be one double glazed window. A radiator was fitted to the wall immediately underneath the window. The committee found no evidence of dampness on the wall of the living room around or below the window.
38. That on inspection of the shower, positioned against the wall of the bathroom and the wall dividing the bathroom from the hallway, the seal around the bottom of the shower unit was broken and missing in parts. That there was water leaking and damp staining was evident to the wall into the hallway.
39. That the shower unit was leaking and not water-tight.
40. That, on inspection of the front door, was a wooden door with a glass, double glazed decorative frame in the centre. External glazing was cracked in parts. There was no evidence of any draughts coming through the front door.
41. That the front door leads into a vestibule area which was divided from the internal hallway of the property by a second door.
42. That the front door was fully functional.
43. That, on inspection of the back door, the back door divided the kitchen from the rear garden area. That the door was made of timber.
44. That a gap was noticeable between the sill and the foot of the kitchen door, that this gap was allowing draughts directly into the property.
45. That to the left hand side of the back door was wooden skirting along the foot of the kitchen wall. That there was evidence of black mould growth to the lower wall.
46. That, on inspection of the back bedroom, which was used by the current tenant's two young children there were two single beds and various pieces of furniture, clothing and toys.
47. That there was one PVC frame window with double glazing. That there was secondary sealant around the opening casement of the window. The window opened satisfactorily and was functional.

48. That there was one radiator attached to the wall which was not on at the time of the inspection.
49. That a small electrical heater was operational in the back bedroom at the time of the inspection.
50. That, behind a chest of drawers, positioned against the wall furthest away from the window of the back bedroom, was an electrical socket which was loose from the wall. That there were another two electrical sockets within the room.
51. That re-plastering work had been undertaken to two of the walls of the back bedroom.
52. That there was no evidence of dampness in the back bedroom.
53. That, on inspection of the bedroom at the front of the property, this was used by the current tenant. A pvc frame window with double glazing was positioned at one side of the room. A double bed was positioned against the opposite wall. There was a chest of drawers against the wall which divided the bedroom from the hallway. That there was clothing and toys stored throughout the room.
54. That there was evidence of condensation on the gable wall.
55. That this patch of condensation was positioned on the wall of the bedroom which was located underneath the part of the guttering which was the subject of complaint in the application.
56. That there was evidence of mould growth along the foot of the walls below the window.
57. That, the complaint of there being an insufficient number of cupboards in the kitchen is not an issue over which the committee has jurisdiction to determine but that, on inspection, there was no evidence of any of the moulding coming away from any of the cupboard doors in the kitchen.
58. That, on inspection of the living room, the committee identified a pvc framed double glazed window facing to the front of the property. That there was a radiator positioned immediately below the window. That there was no evidence of dampness on the walls in the living room.
59. That, on an external inspection of the front of the property, the committee identified that there was a noticeable gap between the guttering and the roof of the property at the corner where the front bedroom is located.
60. That, on an external inspection of the rear of the property, the committee identified overflow from the guttering.

61. That, on inspection of the property, the committee found that the shower was not water tight, in a reasonable state of repair and in proper working order; the property does not meet the repairing standard of section 13 (1) (d) of the Act therefore.
62. That, on inspection of the back bedroom of the property, the committee found that there was an electrical socket loose from the wall; the property does not meet the repairing standard of section 13 (1) (c) of the Act therefore.
63. That, on inspection of the front bedroom of the property, the committee found that there was evidence of condensation and mould growth on the walls of the room, that this is down to lifestyle and occupational issues rather than an issue of dampness and does not render the property to be neither wind nor water tight and in all other respects reasonably fit for human habitation and the property meets the repairing standard of section 13 (1) (a) of the Act therefore.
64. That, on inspection of the kitchen of the property, the committee identified draughts caused by a gap between the back door and the kitchen floor. Therefore, the house is not wind and water tight and in all other respects reasonably fit for human habitation and the property does not meet the repairing standard of section 13 (1) (a) of the Act.
65. That, on inspection of the exterior of the property, the committee identified damage to the guttering at the front and rear of the property. Therefore, the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and do not meet the repairing standard of section 13 (1) (b) of the Act.

Reasons for decision

66. The committee, having inspected the shower unit identified that parts of the seal around the shower unit were broken or missing and created a route into which water was escaping. The water was found to be seeping into the wall which divided the bathroom from the hall and damp staining was in evidence on the wall of the hallway. The landlord's representative accepted that the seal was broken and did not dispute that this caused the mould on the wall.
67. On inspection, the committee identified an electrical socket loose from the wall within the back bedroom of the property which was being used by the tenant's children. This was accepted by the landlord's representative and he provided the committee with an undertaking that the socket would be fixed.

68. The committee identified a patch of condensation on the gable wall of the front bedroom used by the tenant. Tests were undertaken by the surveyor member with a moisture meter which did not return readings of dampness in the room. There was also evidence of mould spores on the front facing wall of the bedroom. Mr McIntosh accepted in his evidence that there had been evidence of mould in the room.
69. On inspection, the committee identified a noticeable gap between the kitchen floor and the foot of the back door and that this allowed draughts into the property. This was not disputed by Mr McIntosh.
70. On inspection, the committee identified that the guttering was not defective, in parts. This was accepted by Mr McIntosh who submitted that the landlord intended to carry out repairs and was in discussions with the neighbouring owner over costs.

On inspection, the committee observed a battery smoke detector fitted to the ceiling of the hallway of the property. No tests were undertaken to identify if the smoke detector was in proper working order as this was not part of the tenant's application and there had been no prior notification of any complaint with the smoke detector to the landlord. Therefore the committee shall make no comment as to whether the smoke detector met the repairing standard of section 13 (1) (f).

Decision

1. The committee determined that the landlord has failed to comply with the duties imposed by sections 13 (1) (a) (b) (c) and (d) and 14 of the Act.
2. The committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1). The Repairing Standard Enforcement Order has a time limit of 4 weeks from the date of service of the Order for the landlord to carry out works necessary to ensure that the property meets the repairing standard.
3. The decision of the committee was unanimous.

Right of Appeal

4. A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

5. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or determined.

S. SWEENEY

Chair

At Glasgow on 27th March 2015